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1947

File No. B. Warehouses 47

Legal DEPARTMENT

B. BRANCH

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1515

Subject:— A Bill for the establishment of a system of licensed warehouses for agricultural and other produce with a view to facilitating grant of advances under Section 17(4)(d) of the Reserve Bank of India, 1934 on low rate of interest to the agriculturists

L.A Bill No XL of 1947

P.32/E

Bombay Act No. LVI of 1947.

File No. B. Warehouses/47

Std. Sectt. Slip 24 B-e.

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Office of the R.L.A.

Statement of the Case.

On the recommendation of the Reserve Bank of India Revenue Department has decided to undertake legislation for the establishment of a system of licensed warehouses for agricultural and other produce with a view to facilitating grant of advances under section 17(4)(d) of the Reserve Bank of India Act, 1934, on low rates of interest to the agriculturists. The object of the legislation is to encourage the establishment of independent warehouses for the storage of agricultural produce and to make provision for their proper supervision and control so that the receipt issued by the licensed warehouseman for the stored produce should serve as a collateral security for short loans (for periods not exceeding 90 days) at a low rate of interest for the purpose of financing seasonal agricultural operations or the marketing of crops. Revenue Department has referred the Bill to the Remembrancer of Legal Affairs to consider its view. Clause 2 (b) of the Bill defines warehouse-man to mean a person, firm or body corporate which carries on the business of storing produce or goods on behalf of depositors and issues receipts for the goods so stored in his warehouse. Clause 3 in Chapter II provides that every warehouse-man shall take out a licence for the conduct of his warehouse business by making an application to the prescribed authority. Provision is also made in this chapter for laying down the conditions for license, its renewal, suspension and cancellation etc. Chapter III requires the warehouse-man to take reasonable care of the produce stored and take precautions against damage or injury to goods. These Chapters in as much as they lay down elaborate provisions regulating the functions of a trading corporation would be held to fall under entry 33 in List I of the Seventh Schedule to the Government of India Act, 1935 and the legislation to that effect would be ultra vires the

necessity or expediency from the legal point of

Provisional Legislature.

As th question is an inportant one and is not quite free from doubt the Advocate General, Bombay, is requested to favour Government with his opinion in the matter.

sd/- D. V. Nyas.

Remembrancer of Legal Affairs.

U. R. to the Advocate General, Bombay, No. 2041.

dated the 28th February, 1947.

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No. 9 of 1947.

ADVOCATE GENERAL'S CHAMBERS,
Bombay, 10th March, 1947.

U.O. to the Advocate General of Bombay, No. 2041 - dated the 26th February, 1947.

Subject:- Licensed Warehouses Bill, 1947 - Publication of -

OPINION

The proposed Bill is aimed at establishing independent warehouses with certain objects and to promote certain facilities. Warehousemen licensed under the Act will be entitled to issue receipts in a prescribed form which will be transferable by endorsement. He will also be subject to certain duties as to the keeping of the warehouse and the goods entrusted to him. In substance the Bill enacts that a warehouseman will not be able to accept and store particular kinds of goods except under a license from Government. I do not think that this is a matter dealt by item 33 of the first List, in Schedule 7. It comes within Item 27 of the second List. The pith and substance of the measure is the regulation and encouragement of trade and commerce within the Province.

Advocate General.

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Letter of the H.L.A.

The proposed legislation is expedient and necessary from the legal point of view.

As it was doubted whether certain provisions in Chapters II and III of the Bill would not be effected by entry 53 in List I of the Seventh schedule to the Government of India Act, 1935, the Advocate General was consulted. Copies of the statement of the facts and of the opinion of the Advocate General are sent herewith, for the information of the Revenue Department.

Remembrancer of Legal Affairs.

C. S. to H.D., No. 3387, dated the 23th March, 1937.

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G C.

Office of the R.L.A.

In continuation of this office U. O. No. 8310, dated the 30th August, 1947 forwarding a revised draft of the Bombay Warehouses Bill, the Revenue Department is informed that the subject-matter of the Bill falls under entries 27, 37, and 54 in List II and entry 11 in List III in the Seventh Schedule to the Government of India Act, 1935. As clause 83 of the Bill contains provisions repugnant to those of the Indian Arbitration Act, 1940, which is an earlier Dominion law relating to entry 11 in the Concurrent Legislative List, it will be necessary to reserve the Bill for the consideration of the Governor General of India Act, 1935. The Bill does not require any sanction or recommendation under the said Act.

Governor General with reference to Sec. 107(2) of the.

Remembrancer of Legal Affairs.

U. O. to R.D., No. 9077, dated the 10th September, 1947.

SVV
15/9/88
A.G.

No. 12472

Legal Department,

Bombay Castle, 1st December, 1947.

From

F. L. ..., Esquire, I.C.S.,
Secretary to the Government of Bombay.

To

The Private Secretary to the Governor of Bombay.

Subject:- A Bill to provide for the regulation and licensing of warehouses in the Province of Bombay.

Sir,

With reference to section 75 of the Government of India Act, 1935, I am directed to forward herewith for being presented to His Excellency the Governor, the authentic copy of the Bill to provide for the regulation and licensing of warehouses in the Province of Bombay, which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 4th and 20th October 1947, respectively.

2. The subject-matter of the Bill falls under entries 27, 27 and 56 in List II and entry 18 in List III in the Seventh schedule to the Government of India Act, 1935.

3. Clause 53 of the Bill contains provisions repugnant to those of the Indian Arbitration Act, 1940 which is a central legislation relating to entry 27 in the Concurrent Legislative List, it is necessary to reserve the Bill for the consideration of the Governor-General of India Act, 1935.

4. I am also forwarding herewith six copies of each

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1. Bill as introduced in the Bombay Legislative Assembly withthe Statement of Objects and reasons.	of the items Nos. 1 to 3 and two copies of item No. 4 of the papers noted in the margin. The Bill was not referred to a Select Committee.
2. Bill as read for the third time and passed by the Bombay Legislative Assembly and as introduced in the Bombay Legislative Council.	
3. Bill as read for the third time and passed by the Bombay Legislative Council.	
4. Extracts from the proceedings of the Bombay Legislative Assembly dated the 3rd and 6th October 1947 and of the Bombay Legislative Council dated the 20th October 1947.	

I have the honour to be,

Sir,

Your most obedient servant,

Secretary to Government.

Through

The Secretary to the Government of Bombay,

Revenue Department.

SVV
18/5/48
4 c.

No.P.S.G. - 5683
Office of the Private Secretary to the Governor,
Government House,
Bombay, 8th December, 1947.

From
L.E.Baghhave, Esquire, I.C.S.,
Private Secretary to the Governor of Bombay.

To
The Secretary to the Bombay Legislature Department,
Council Hall, Bombay.

Subject:- The Bombay Warehouses Bill, 1947.

Sir,

With reference to the above-mentioned Bill which was read for the third time and passed at meetings of the Bombay Legislative Assembly and Bombay Legislative Council on the 4th and 20th October 1947, I am directed to state, for the information of the Honourable the Speaker and the Honourable the President, that as clause 23 of the Bill contains provisions repugnant to those of the India Arbitration Act, 1940, which is an earlier existing law relating to entry 11 in the Concurrent Legislative List, it is necessary to reserve the Bombay Warehouses Bill, 1947, for the consideration of His Excellency the Governor-General with reference to section 107(2) of the Government of India Act, 1935. His Excellency the Governor is accordingly pleased, under section 75 of the Government of India Act, 1935, to declare that he reserves the Bill for the consideration of His Excellency the Governor-General.

Yours obdient servant,

L. E. Baghhave.

Private Secretary to the Governor of Bombay.

No. P. S. G. - 5682
Office of the Private Secretary to the Governor,
Government House.
Bombay, 8th December, 1947.

Copy forwarded with compliments for information to-

(1) The Secretary to Government, Legal Department, with refrence to his letter No. 11472, dated 1st December, 1947.

(2) The Secretary to Government, Revenue Department, with reference to his endorsement No. 10750-H/39, dated the 3rd December, 1947.

By order of the Governor of Bombay,

Private Secretary to the Governor of Bombay.

SVV
16/5/56
4 o.

No. A.G.G. 138

Government House,

Derby, 8th January, 1948.

re.

... Pickard, Esquire, Jes.,
Private Secretary to His Excellency.

To

The Secretary to Government,
Legal Department, Derby.

Subject:- Derby Ordinances 1111, 1947.

Sir,

With reference to the correspondence ending with this office endorsement No. G.G. 5693, dated the 4th December 1947, on the above subject, I am directed to say that His Excellency the Governor-General has, under the provisions of sub-section (1) of section 7d of the Government of India Act, 1935, as amended by the Derby Ordinances Bill, 1947, on the 8th January, 1948.

2. The authentic copy of the Bill with His Excellency's assent signified thereon is returned herewith.

Your obedient servant,

Private Secretary to the Governor of Derby.

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4 c.

A Bill to provide for the regulation and licensing of warehouses in the Province of Bombay.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 2033,
Bombay Castle, 5th September, 1947.

Memorandum from the Revenue Department No. 10750-R/39 dated the 5th September, 1947:- transferring for necessary action, the papers relating to a Bill to provide for the regulation and licensing of warehouses in the Province of Bombay.

RESOLUTION:- The Bill with Statement of Objects and Reasons should be forwarded to the Manager, Government Central Press, Bombay, for publication in the Bombay Government Gazette, dated the 5th September 1947 as Bill No. XL of 1947.

2. The Bill and the Statement of Objects and Reasons should be translated into Marathi, Gujrathi, Kannada and Hindustani (in Urdu and Devnagari Scripts) and the translations should be published in the Bombay Government Gazette on the 10th September, 1947.

3. The dates of the various publications should be reported to the Bombay Legislature Department.

By order of the Governor of Bombay,

S. B. Palekar,

Deputy Secretary to Government.

To

The Manager, Government Central Press, Bombay (with the Bill and S.O.R. and with a request that 250 Gazette copies of the Bill and the S.O.R. may be forwarded to the Bombay Legislature Department for distribution to the Members of the Bombay Legislative Assembly and 50 copies for the use of the Legal Department and 20 copies for the use of the R.L.)

The Revenue Department.) with a copy
The Oriental Translator to Government) of the
The Bombay Legislature Department) Bill and
The Director of Publicity, Bombay.) S. O. R.

With five extra copies of the Bill.

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& C.

Subject:-

Publication of the Bombay Warehouses Act, 1947.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 678
Bombay Castle, 17th January, 1948.

Letter to the Private Secretary to the Governor, No. 1107, dated the 1st December, 1947.

Letter from the Private Secretary to the Governor, No. Pvt. 128, dated the 10th January 1948:-

"With reference to the correspondence ending with this office endorsement No. 2/0. 5035, dated the 8th December, 1947, on the above subject, I am directed to say that His Excellency the Governor-General has, under the provisions of sub-section (1) of section 76 of the Government of India Act, 1935, assented to the Bombay Warehouses Bill 1947, on the 6th January, 1948.

2. ~~The authentic copy of the Bill with His Excellency~~

3. The authentic copy of the Bill with His Excellency assent signified thereon is returned herewith."

RESOLUTION.- The Law should be published as Bombay Act No. LVI of 1947, in the Bombay Government Gazette dated the 15th January, 1948.

2. The Act should be translated into Marathi, Gujarati Kannada and Hindustani (in Urdu and Devanagari scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Revenue Department with reference to the Memorandum from that Department No. 10760-H/38, dated the 6th September 1947.

By order of the Governor of Bombay,

C. K. Bhojani,
Assistant Secretary to Government.

To

The Manager, Government Central Press, Bombay. (With copy of the Act and with a request that 50 demi-8 copies of the Act may be forwarded to the Legal Department).

The Revenue Department,
The Oriental Translator to Government,
The Bombay Legislature Department,
The Director of Publicity, Bombay,
The Enquiry Officer for the Marketables, Bombay.

With five extra copies of the Act.

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An Act

L. A. BILL No. XL OF 1947.

~~A Bill~~ *to provide for the regulation and licensing of warehouses in the Province of Bombay.*

(As ~~read~~ for the third time and passed by ~~the~~ Legislative ~~Assembly~~ on the 4th October 1947.)

(As read for the ~~third~~ time and passed by the ~~Legislative~~ Council on the 20th October 1947.)

WHEREAS it is expedient to encourage the establishment of private warehouses and make provision for their proper supervision and control; It is hereby enacted as follows :—

CHAPTER I.

Preliminary.

Short title, extent and commencement.

1. (*1*) This Act may be called the Bombay Warehouses Act, 1947.

(*2*) It extends to the whole of the Province of Bombay.

(*3*) It shall come into force on such date as the Provincial Government may, by notification in the *Official Gazette*, appoint in this behalf.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "Co-operative Society" means a society registered or deemed to be registered under the provisions of the Bombay Co-operative Societies Act, 1925.

Bom. VII of 1925.

(*b*) "Depositor" means a person or firm which tenders goods to the warehouseman for storing in his warehouse and includes any person who lawfully holds the receipt issued by the warehouseman in respect of the goods and derives title to it by endorsement or transfer from the depositor or his lawful transferee.

(*c*) " Goods " means agricultural produce as defined in the Bombay Agricultural Produce Markets Act, 1939, but does not include the produce of animal husbandry. Bom. XXII of 1939.

(*d*) " Licence " means a licence granted under section 5 or renewed under section 7.

(*e*) " Prescribed " means prescribed by rules made under this Act.

(*f*) " Prescribed authority " means the authority empowered by the Provincial Government to carry out the duties under this Act.

(*g*) " Receipt " means a warehouse receipt, in the form prescribed, issued by a warehouseman to a depositor depositing goods in a warehouse.

(*h*) " Warehouse " means a building, structure or other protected enclosure which is used or may be used for the purpose of storing goods.

(*i*) " Warehouseman " means a person or firm holding a licence for issuing under section 27, receipts for goods stored in his warehouse.

CHAPTER II.

Licencing of Warehouses.

Prohibition of carrying on business as warehouseman without licence.

3. Subject to the provisions of section 11, no person or firm shall without a licence carry on the business of a warehouseman or represent or hold himself out as a warehouseman.

Application.

4. Every person or firm desirous of carrying on the business of a warehouseman shall take out a licence by making an application to the prescribed authority.

Grant of licence.

5. The prescribed authority may on payment of the prescribed fee grant a licence to such person or firm for the conduct of his business in accordance with the terms of the licence and the provisions of this Act and the rules made thereunder.

Conditions for grant of licence.

6. Before granting a licence the prescribed authority shall satisfy itself —

(*i*) that the warehouse is suitable for the proper storage of the particular goods for which a licence has been applied for,

(*ii*) that the applicant is competent to conduct such a warehouse,

(*iii*) that the applicant furnishes to the prescribed authority such security and in such manner as may be prescribed,

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(*iv*) that there is no other reason for which the applicant may in the opinion of the prescribed authority be deemed to be disqualified, and

(*v*) that the applicant fulfils any other condition which the Provincial Government may, by notification in the *Official Gazette*, specify in this behalf.

Term and renewal of licence.

7. Every licence shall be valid for the prescribed period and may on the expiry of such period be renewed by the prescribed authority on an application made by the warehouseman in that behalf and on payment of the prescribed fee.

Licences when to be revoked.

8. Every licence shall be liable to be revoked by the prescribed authority for reasons to be stated in writing in the order of revocation and in particular if the warehouseman—

(*a*) has been adjudged an insolvent ;

(*b*) has parted in whole or in part with his control over the licensed warehouse ;

(*c*) has ceased to conduct such licensed warehouse ;

(*d*) has made exhorbitant or unreasonable charges for services rendered by him ;

(*e*) has in any manner become incompetent to conduct the business of a warehouseman, or

(*f*) has contravened any of the terms of the licence or any of the provisions of this Act and the rules made thereunder or any other condition which the Provincial Government may, by notification in the *Official Gazette*, specify.

Notice to be given before revocation of licence and suspension and revocation of licence.

9. (*1*) Before revoking a licence the prescribed authority shall give notice to the warehouseman specifying the charges against him and calling upon him to show cause why the licence should not be revoked.

(*2*) After considering the explanation, if any, offered by the warehouseman, the prescribed authority may revoke the licence or pass such orders as it deems just.

(*3*) The prescribed authority may suspend the licence of a warehouseman pending the decision on the enquiry referred to in sub-sections (*1*) and (*2*).

Appeals and revision.

10. (*1*) An appeal shall lie to the Collector against an order of revocation of a licence within sixty days from the date of such order.

(*2*) On receipt of an appeal under sub-section (*1*), the Collector shall, after giving the warehouseman and the prescribed authority an opportunity of being heard, pass such order thereon as he thinks fit.

(3) The Provincial Government may at any time call for and examine the record of any proceedings before the prescribed authority or the Collector relating to suspension or revocation of a licence for the purpose of satisfying itself as to the correctness, legality or propriety of any order passed therein, and as to the regularity of such proceedings and may either annul, reverse, modify or confirm such order or pass such other order as it may deem fit.

(4) Every order passed by the prescribed authority under section 9, subject to an appeal or revision as provided in this section, and every order passed by the Collector in appeal, subject to such revision, and every order passed by the Provincial Government in revision shall be final and shall not be liable to be questioned in any court of law.

Return of licence.

11. When a licence expires or is suspended or revoked, the warehouseman shall cease to carry on the business of a warehouseman and shall return the licence to the prescribed authority:

Provided that the prescribed authority shall after such expiration, suspension or revocation give such reasonable time as it thinks fit to such warehouseman to enable him to wind up the business and notwithstanding anything contained in section 3, the warehouseman may carry on the business of a warehouseman during the said time.

Duplicate licences.

12. Where a licence granted to a warehouseman is lost or destroyed, the prescribed authority may issue a duplicate thereof on an application made in that behalf by the warehouseman and on payment of the prescribed fee.

CHAPTER III.

Duties of a Warehouseman.

Reasonable care of goods stored.

13. Every warehouseman shall take such care of the goods in his custody as a man of ordinary prudence would take of his own goods under similar circumstances and conditions.

Precautions against damage or injury to goods.

14. (1) Every warehouseman shall keep his warehouse in such condition as may be prescribed and in accordance with the terms of the licence in order to prevent loss, damage or injury to the goods stored in the warehouse.

(2) No warehouseman shall accept for storing in his warehouse goods which are contaminated or infected by worms and pests, and which are likely to cause damage to other goods stored in the warehouse.

Preservation of identity of goods.

15. Every warehouseman shall keep in his warehouse the goods of one depositor so far separate from the goods of other depositors and from other goods of the same depositor for which a separate receipt has been issued as to permit at all times the identification and delivery of the goods deposited:

Provided that where standardised and graded goods are stored in a warehouse, subject to any agreement between the warehouseman and depositor, the same variety of goods belonging to different depositors may be mingled together by the warehouseman and each depositor will be entitled only to his portion of the goods according to weight or quantity, as the case may be, as shown in his receipt.

Goods deteriorating in warehouses and their disposal.

16. (*1*) Whenever goods stored in a warehouse deteriorate or are about to deteriorate from causes beyond the control of the warehouseman, he shall forthwith give notice of such deterioration to the depositor asking him to take delivery of the goods immediately on surrendering the receipt duly discharged and on payment to the warehouseman of all dues. If the depositor does not comply with the notice within a reasonable time, the warehouseman may cause such goods to be removed from his warehouse and sold by public auction at the cost and risk of the depositor.

(*2*) Any person interested in any goods or the receipt covering such goods stored in a warehouse, may, in writing, notify the warehouseman of the fact and nature of his interest in the goods and the warehouseman shall keep a record thereof. If the person requests in writing that he be notified regarding the condition of the goods and agrees to pay the charges for such notification, the warehouseman shall notify such person accordingly.

Delivery of goods.

17. Every warehouseman in the absence of any reasonable or lawful excuse shall, without unnecessary delay, deliver the goods stored in his warehouse to the depositor on demand made by him and on surrender of the warehouse receipt duly discharged and on payment of the charges due to the warehouseman. Subject to any agreement between the warehouseman and the depositor, the depositor may take partial delivery of the goods stored in the warehouse.

Accounts, books, etc. to be maintained and kept in safe place by warehouseman.

18. Every warehouseman shall keep and maintain in a place of safety such books, accounts and records as may be prescribed.

Insurance of goods in warehouses.

19. (*1*) Every warehouseman shall insure in such manner as may be prescribed the goods stored in his warehouse against loss or damage by fire, floods, theft or any other accident.

(*2*) Every warehouseman shall be entitled to recover from the depositor at the rate prescribed the charges for insurance in respect of the depositor's goods before delivery thereof and shall have a lien on the said goods in respect of such charges.

Discrimination prohibited.

20. Every warehouseman shall receive for storage therein so far as its capacity permits any goods of the kind customarily stored by him therein, which may be tendered to him in a suitable condition for storing in the usual manner in the ordinary and usual course of business without making any discrimination between persons desiring to avail themselves of the facilities of his warehouse :

Provided that a warehouseman may grant such concessions to a co-operative society as may be prescribed.

Warehouseman other than co-operative society not to lend money against goods in warehouse.

21. Notwithstanding anything contained in any law, no warehouseman other than a co-operative society shall, either on his own account or that of others, deal in or lend money on goods which he receives for storage in his warehouse.

CHAPTER IV.

Inspection and Classification of Goods.

Inspection.

22. The prescribed authority may inspect or cause to be inspected, examine, or cause to be examined the warehouse of a warehouseman, its machinery, equipment, goods stored therein and the account books and records at any time during business hours for the purpose of satisfying itself that the requirements of this Act and the rules made thereunder are complied with.

Licensed weighers, samplers and classifiers.

23. (*1*) The prescribed authority may issue licences to qualified and competent persons entitling them to act as weighers, samplers and classifiers of any goods stored or to be stored in a warehouse and to issue certificates as to weight, quality or grade of the goods which they have examined.

(*2*) The certificates issued by weighers, samplers and classifiers as to weight, quality or grade of the goods stored in the warehouse shall, subject to any order in appeal preferred by either of them to the Board of Arbitrators, be binding on the warehouseman and depositor.

(*3*) The prescribed authority may appoint a Board of Arbitrators to decide complaints against weighers, samplers and classifiers or warehouseman relating to weight, quality or grade of the goods stored in the warehouse. The decision of the Board of Arbitrators shall be final and shall not be liable to be questioned in a court of law.

Suspension or revocation of licences.

24. Subject to rules made in this behalf every licence granted to a weigher, sampler or classifier shall be liable to be suspended or revoked by the prescribed authority.

Return of licences.

25. Whenever a licence granted to a weigher, sampler or classifier expires, or is suspended or revoked, he shall return it to the prescribed authority.

Prohibition of unlicensed weighers, classifiers etc.

26. No person who is not licensed under this Chapter shall represent or hold himself out as a licensed weigher, sampler, or classifier.

CHAPTER V.

Warehouse Receipts.

Issue of receipts.

27. Every warehouseman shall issue a receipt in the prescribed form containing full particulars in respect of the goods stored in his warehouse by each depositor.

Receipt transferable by endorsement.

28. A receipt issued by a warehouseman shall, unless otherwise specified on the receipt, be transferable by endorsement and shall entitle its lawful holder to receive the goods specified in it on the same terms and conditions on which the person who originally deposited the goods would have been entitled to receive them.

Duplicate receipts.

29. In case a receipt is lost or destroyed, a warehouseman shall issue a duplicate thereof to the depositor on an application made by him in that behalf. The duplicate receipts shall be issued under such conditions as may be prescribed.

CHAPTER VI.

Miscellaneous.

Security amount to be forfeited and recovered as arrear of land revenue.

30. (*1*) If a warehouseman contravenes any of the conditions of his licence or fails to comply with or acts in contravention of any provision of this Act,—

(*a*) the amount of security deposited by him under a bond executed by him under the provisions of this Act shall be liable to be forfeited ; and

(*b*) the amount due under such bond shall be recoverable from him or from his sureties or their heirs or legal representatives as an arrear of land revenue.

(*2*) The Provincial Government may make payment out of the amount so forfeited or recovered to any person who may have sustained loss by reason of the warehouseman failing to comply with, or acting in contravention of, any provision of this Act.

Penalty.

31. (*1*) Whoever fails to comply with, or acts in contravention of, any provision of this Act, shall, on conviction, be punishable—

(*a*) in the case of contravention of the provisions of section 3 or 21, with simple imprisonment which may extend to six months and fine which may extend to Rs. 1,000, and

(*b*) in any other case, with fine which may extend to Rs. 1,000.

(2) Where a person committing an offence under sub-section (1) is a company, or other body corporate, or an association of persons (whether incorporated or not), every director, manager, secretary, agent or other officer or person concerned with the management thereof shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.

No compensation for suspension or cancellation of licence.

32. Where any licence is suspended or cancelled under this Act, no person shall be entitled to any compensation or the refund of any fee paid in respect thereof.

Power of Provincial Government to delegate its powers.

33. The Provincial Government may delegate to any officer or authority subordinate to it any of the powers conferred on it by or under this Act.

Rules.

34. (1) The Provincial Government may, by notification in the *Official Gazette*, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, such rules may provide for all or any of the following matters, namely :—

(*a*) the authority empowered to carry out the duties under this Act ;

(*b*) the form of receipt under clause (*g*) of section 2 ;

(*c*) the form of application for taking out a licence under section 4, for its renewal under section 7 and for the issue of a duplicate licence under section 12 ;

(*d*) the fee for grant of a licence and the terms of the licence in accordance with which the business of a warehouseman shall be conducted under section 5 and the period for which the licence shall be valid under section 7 ;

(*e*) the amount of security and the manner of furnishing the same (including the form of bond) under clause (iii) of section 6 ;

(*f*) the fee for the renewal of a licence under section 7 and for the issue of a duplicate under section 12 ;

(*g*) the conditions on or under which a licence may be renewed and a duplicate thereof issued ;

(*h*) the condition in which a warehouse shall be kept under sub-section (1) of section 14 ;

(*i*) the books, accounts and records to be kept and maintained under section 18 ;

(*j*) the manner in which goods shall be insured under sub-section (*1*) of section 19;

(*k*) the rates at which the charges for insurance shall be recoverable under sub-section (*2*) of section 19;

(*l*) the concessions which may be granted to a co-operative society under section 20;

(*m*) the qualifications of, and grant of licences to weighers, samplers and classifiers, the conditions on which and the period for which the licences may be granted to them, the form of certificates to be issued by them, the renewal of their licences, the conditions on which duplicate licences may be issued, and the conditions under which the licences may be suspended or revoked for the purposes of sections 23 and 24;

(*n*) the conditions under which a duplicate receipt may be issued under section 29;

(*o*) the publication of the grant, suspension and revocation of licences and the list of warehousemen and their warehouses;

(*p*) the charges to be made by a warehouseman for storing goods in his warehouse;

(*q*) the manner of giving notices under this Act;

(*r*) the manner of conducting a public auction for the sale of goods deteriorating or about to deteriorate in a warehouse and accounting for the proceeds of such sales by a warehouseman;

(*s*) the classification of goods stored by a warehouseman;

(*t*) the standard weights and measures to be used by a warehouseman;

(*u*) the procedure to be followed in proceedings before the Board of Arbitrators and the mode of executing their awards;

(*v*) generally for the efficient conduct of the business of a warehouseman.

(*3*) The rules made under this section shall be subject to the condition of previous publication in the *Official Gazette*.

Government of Bombay

LEGAL DEPARTMENT

[L. A. BILL No. XL OF 1947]

(As read for the third time and passed by the Legislative Assembly on the 4th October 1947.)

(As read for the third time and pass by the Legislative Council on the 20th October 1947.)

A Bill to provide for the regulation an licensing of warehouses in the Provinc of Bombay.

[Mr. VAIKUNTH L. MEHTA, M.L.A.]

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PART V

[To be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations to be published in the "Bombay Government Gazette". The dates of publication to be reported.]

The following Bill is published under the proviso to rule 80 of the Bombay Legislative Assembly Rules:—

L. A. BILL No. XL OF 1947.

A Bill to provide for the regulation and licensing of warehouses in the Province of Bombay.

CHAPTER I.

Preliminary.

WHEREAS it is expedient to encourage the establishment of private warehouses and make provision for their proper supervision and control; It is hereby enacted as follows :—

Short title, extent and commencement.

1. (*1*) This Act may be called the Bombay Warehouses Act, 1947.

(*2*) It extends to the whole of the Province of Bombay.

(*3*) It shall come into force on such date as the Provincial Government may, by notification in the Official Gazette, appoint in this behalf.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "Co-operative Society" means a society registered or deemed to be registered under the provisions of the Bombay Co-operative Societies Act, 1925.

Bom. VII of 1925.

(*b*) "Depositor" means a person or firm which tenders goods to the warehouseman for storing in his warehouse and includes any person who lawfully holds the receipt issued by the warehouseman in respect of the goods and derives title to it by endorsement or transfer from the depositor or his lawful transferee.

(*c*) " Goods " means agricultural produce as defined in the Bombay Agricultural Produce Markets Act, 1939, but does not include the produce of animal husbandry. Bom. XXII of 1939.

(*d*) " Licence " means a licence granted under section 5 or renewed under section 7.

(*e*) " Prescribed " means prescribed by rules made under this Act.

(*f*) " Prescribed authority " means the authority empowered by the Provincial Government to carry out the duties under this Act.

(*g*) " Receipt " means a warehouse receipt, in the form prescribed, issued by a warehouseman to a depositor depositing goods in a warehouse.

(*h*) " Warehouse " means a building, structure or other protected enclosure which is used or may be used for the purpose of storing goods.

(*i*) " Warehouseman " means a person or firm carrying on the business of storing goods on behalf of depositors and issuing receipts therefor.

CHAPTER II.

Licencing of Warehouses.

Prohibition of carrying on business as warehouseman without licence.

3. Subject to the provisions of section 11, no person shall without a licence carry on the business of a warehouseman or represent or hold himself out as a licensed warehouseman.

Application.

4. Every warehouseman shall take out a licence for the conduct of his business by making an application to the prescribed authority.

Grant of licence.

5. The prescribed authority may on payment of the prescribed fee grant a licence to a warehouseman for the conduct of his business in accordance with the terms of the licence and the provisions of this Act and the rules made thereunder.

Conditions for grant of licence.

6. Before granting a licence the prescribed authority shall satisfy itself —

(*i*) that the warehouse is suitable for the proper storage of the particular goods for which a licence has been applied for,

(*ii*) that the applicant is competent to conduct such a warehouse,

(*iii*) that the applicant furnishes to the prescribed authority such security and in such manner as may be prescribed,

(*iv*) that there is no other reason for which the applicant may in the opinion of the prescribed authority be deemed to be disqualified, and

(*v*) that the applicant fulfils any other condition which the Provincial Government may, by notification in the Official Gazette, specify in this behalf.

Term and renewal of licence.

7. Every licence shall be valid for the prescribed period and may on the expiry of such period be renewed by the prescribed authority on an application made by the warehouseman in that behalf and on payment of the prescribed fee.

Licences when to be revoked.

8. Every licence shall be liable to be revoked by the prescribed authority for reasons to be stated in writing in the order of revocation and in particular if the warehouseman—

(*a*) has been adjudged an insolvent ;

(*b*) has parted in whole or in part with his control over the licensed warehouse ;

(*c*) has ceased to conduct such licensed warehouse ;

(*d*) has made exhorbitant or unreasonable charges for services rendered by him ;

(*e*) has in any manner become incompetent to conduct the business of a warehouseman, or

(*f*) has contravened any of the terms of the licence or any of the provisions of this Act and the rules made thereunder or any other condition which the Provincial Government may by notification in the Official Gazette, specify.

Notice to be given before revocation of licence and suspension and revocation of licence.

9. (*1*) Before revoking a licence the prescribed authority shall give notice to the warehouseman specifying the charges against him and calling upon him to show cause why the licence should not be revoked.

(*2*) After considering the explanation, if any, offered by the warehouseman, the prescribed authority may revoke the licence or pass such orders as it deems just.

(*3*) The prescribed authority may suspend the licence of a warehouseman pending the decision on the enquiry referred to in sub-sections (*1*) and (*2*).

Appeals and revision.

10. (*1*) An appeal shall lie to the Collector against an order of revocation of a licence within sixty days from the date of such order.

(*2*) On receipt of an appeal under sub-section (*1*), the Collector shall, after giving the warehouseman and the prescribed authority an opportunity of being heard, pass such order thereon as he thinks fit.

(*3*) The Provincial Government may at any time call for and examine the record of any proceedings before the prescribed authority or the Collector relating to suspension or revocation of a licence for the purpose of satisfying itself as to the correctness, legality or propriety of any order passed therein, and as to the regularity of such proceedings and may either annul, reverse, modify or confirm such order or pass such other order as it may deem fit.

(*4*) Every order passed by the prescribed authority under section 9, subject to an appeal or revision as provided in this section, and every order passed by the Collector in appeal, subject to such revision, and every order passed by the Provincial Government in revision shall be final and shall not be liable to be questioned in any court of law.

Return of licence.

11. When a licence expires or is suspended or revoked, the warehouseman shall cease to carry on the business of a licenced warehouseman and shall return the licence to the prescribed authority :

Provided that the prescribed authority shall after such expiration, suspension or revocation give such reasonable time as it thinks fit to such warehouseman to enable him to wind up the business and notwithstanding anything contained in section 3, the warehouseman may carry on the business of a warehouseman during the said time.

Duplicate licences.

12. Where a licence granted to a warehouseman is lost or destroyed, the prescribed authority may issue a duplicate thereof on an application made in that behalf by the warehouseman and on payment of the prescribed fee.

CHAPTER III.

Duties of a Warehouseman.

Reasonable care of goods stored.

13. Every warehouseman shall take such care of the goods in his custody as a man of ordinary prudence would take of his own goods under similar circumstances and conditions.

Precautions against damage or injury to goods.

14. (*1*) Every warehouseman shall keep his warehouse in such condition as may be prescribed and in accordance with the terms of the licence in order to prevent loss, damage or injury to the goods stored in the warehouse.

(*2*) No warehouseman shall accept for storing in his warehouse goods which are contaminated or infected by worms and pests, and which are likely to cause damage to other goods stored in the warehouse.

Preservation of identity of goods.

15. Every warehouseman shall keep in his warehouse the goods of one depositor so far separate from the goods of other depositors and from other goods of the same depositor for which a separate receipt has been issued as to permit at all times the identification and delivery of the goods deposited,

Provided that where standardised and graded goods are stored in a warehouse, subject to any agreement between the warehouseman and depositor, the same variety of goods belonging to different depositors may be mingled together by the warehouseman and each depositor will be entitled only to his portion of the goods according to weight or quantity, as the case may be, as shown in his receipt.

Goods deteriorating in warehouses and their disposal.

16. (*1*) Whenever goods stored in a warehouse deteriorate or are about to deteriorate from causes beyond the control of the warehouseman, he shall forthwith give notice of such deterioration to the depositor asking him to take delivery of the goods immediately on surrendering the receipt duly discharged and on payment to the warehouseman of all dues. If the depositor does not comply with the notice within a reasonable time, the warehouseman may cause such goods to be removed from his warehouse and sold by public auction at the cost and risk of the depositor.

(*2*) Any person interested in any goods or the receipt covering such goods stored in a warehouse, may, in writing, notify the warehouseman of the fact and nature of his interest in the goods and the warehouseman shall keep a record thereof. If the person requests in writing that he be notified regarding the condition of the goods and agrees to pay the charges for such notification, the warehouseman shall notify such person accordingly.

Delivery of goods.

17. Every warehouseman in the absence of any reasonable or lawful excuse shall, without unnecessary delay, deliver the goods stored in his warehouse to the depositor on demand made by him and on surrender of the warehouse receipt duly discharged and on payment of the charges due to the warehouseman. Subject to any agreement between the warehouseman and the depositor, the depositor may take partial delivery of the goods stored in the warehouse.

Accounts, books, etc. to be maintained and kept in safe place by warehouseman.

18. Every warehouseman licensed under this Act shall keep and maintain in a place of safety such books, accounts and records as may be prescribed.

Insurance of goods in warehouses.

19. (*1*) Every warehouseman shall insure in such manner as may be prescribed the goods stored in his warehouse against loss or damage by fire, floods, theft or any other accident.

(*2*) Every warehouseman shall be entitled to recover from the depositor at the rate prescribed the charges for insurance in respect of the depositor's goods before delivery thereof and shall have a lien on the said goods in respect of such charges.

Discrimination prohibited.

20. Every warehouseman shall receive for storage therein so far as its capacity permits any goods of the kind customarily stored by him therein, which may be tendered to him in a suitable condition for storing in the usual manner in the ordinary and usual course of business without making any discrimination between persons desiring to avail themselves of the facilities of his warehouse :

Provided that a warehouseman may grant such concessions to a co-operative society as may be prescribed.

Warehouseman other than co-operative society not to lend money against goods in warehouse.

21. Notwithstanding anything contained in any law, no warehouseman other than a co-operative society shall, either on his own account or that of others, deal in or lend money on goods which he receives for storage in his warehouse.

CHAPTER IV.

Inspection and Classification of Goods.

Inspection.

22. The prescribed authority may inspect or cause to be inspected, examine, or cause to be examined a warehouse licensed under this Act, its machinery, equipment, goods stored therein and the account books and records at any time during business hours for the purpose of satisfying itself that the requirements of this Act and the rules made thereunder are complied with.

Licensed weighers, samplers and classifiers.

23. (*1*) The prescribed authority may issue licences to qualified and competent persons entitling them to act as weighers, samplers and classifiers of any goods stored or to be stored in a warehouse and to issue certificates as to weight, quality or grade of the goods which they have examined.

(*2*) The certificates issued by weighers, samplers and classifiers as to weight, quality or grade of the goods stored in the warehouse shall, subject to any order in appeal preferred by either of them to the Board of Arbitrators, be binding on the warehouseman and depositor.

(*3*) The prescribed authority may appoint a Board of Arbitrators to decide complaints against weighers, samplers and classifiers or warehouseman relating to weight, quality or grade of the goods stored in the warehouse. The decision of the Board of Arbitrators shall be final and shall not be liable to be questioned in a court of law.

Suspension or revocation of licences.

24. Subject to rules made in this behalf every licence granted to a sampler, weigher or classifier shall be liable to be suspended or revoked by the prescribed authority.

Return of licences.

25. Whenever a licence granted to a sampler, weigher or classifier expires, or is suspended or revoked, he shall return it to the prescribed authority.

Prohibition of unlicensed weighers, classifiers etc.

26. No person who is not licensed under this Chapter shall represent or hold himself out as a licensed weigher, sampler, or classifier.

CHAPTER V.

Warehouse Receipts.

Issue of receipts.

27. Every warehouseman shall issue a receipt in the prescribed form containing full particulars in respect of the goods stored in his warehouse by each depositor.

Receipt transferrable by endorsement.

28. A receipt issued by a warehouseman shall, unless otherwise specified on the receipt, be transferrable by endorsement and shall entitle its lawful holder to receive the goods specified in it on the same terms and conditions on which the person who originally deposited the goods would have been entitled to receive them.

Duplicate receipts.

29. In case a receipt is lost or destroyed, a warehouseman shall issue a duplicate thereof to the depositor on an application made by him in that behalf. The duplicate receipts shall be issued under such conditions as may be prescribed.

CHAPTER VI.

Miscellaneous.

Security amount to be forfeited and recovered as arrear of land revenue.

30. (*1*) If a warehouseman contravenes any of the conditions of his licence or fails to comply with or acts in contravention of any provision of this Act,—

(*a*) the amount of security deposited by him under a bond executed by him under the provisions of this Act shall be liable to be forfeited ; and

(*b*) the amount due under such bond shall be recoverable from him or from his sureties or their heirs or legal representatives as an arrear of land revenue.

(*2*) The Provincial Government may make payment out of the amount so forfeited or recovered to any person who may have sustained loss by reason of the warehouseman failing to comply with, or acting in contravention of, any provision of this Act.

Penalty.

31. (*1*) Whoever fails to comply with, or acts in contravention of, any provision of this Act, shall, on conviction, be punishable—

(*a*) in the case of contravention of the provisions of section 3 or 21, with simple imprisonment which may extend to six months and fine which may extend to Rs. 1,000, and

(*b*) in any other case, with fine which may extend to Rs. 1,000.

(2) Where a person committing an offence under sub-section (1) is a company, or other body corporate, or an association of persons (whether incorporated or not), every director, manager, secretary, agent or other officer or person concerned with the management thereof shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.

No compensation for suspension or cancellation of licence.

32. Where any licence is suspended or cancelled under this Act, no person shall be entitled to any compensation or the refund of any fee paid in respect thereof.

Power of Provincial Government to delegate its powers.

33. The Provincial Government may delegate to any officer or authority subordinate to it any of the powers conferred on it by or under this Act.

Rules.

34. (1) The Provincial Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, such rules may provide for all or any of the following matters, namely :—

(a) the authority empowered to carry out the duties under this Act;

(b) the form of receipt under clause (g) of section 2;

(c) the form of application for taking out a licence under section 4, for its renewal under section 7 and for the issue of a duplicate licence under section 12;

(d) the fee for grant of a licence and the terms of the licence in accordance with which the business of a warehouseman shall be conducted under section 5 and the period for which the licence shall be valid under section 7;

(e) the amount of security and the manner of furnishing the same (including the form of bond) under clause (iii) of section 6;

(f) the fee for the renewal of a licence under section 7 and for the issue of a duplicate under section 12;

(g) the conditions on or under which a licence may be renewed and a duplicate thereof issued;

(h) the condition in which a warehouse shall be kept under sub-section (1) of section 14;

(i) the books, accounts and records to be kept and maintained under section 18;

(*j*) the manner in which goods shall be insured under sub-section (*1*) of section 19;

(*k*) the rates at which the charges for insurance shall be recoverable under sub-section (*2*) of section 19;

(*l*) the concessions which may be granted to a co-operative society under section 20;

(*m*) the qualifications of, and grant of licences to weighers, samplers and classifiers, the conditions on which and the period for which the licences may be granted to them, the form of certificates to be issued by them, the renewal of their licences, the conditions on which duplicate licences may be issued, and the conditions under which the licences may be suspended or revoked for the purposes of sections 23 and 24;

(*n*) the conditions under which a duplicate receipt may be issued under section 29;

(*o*) the publication of the grant, suspension and revocation of licences and the list of licensed warehouses;

(*p*) the charges to be made by a warehouseman for storing goods in a warehouse;

(*q*) the manner of giving notices under this Act;

(*r*) the manner of conducting a public auction for the sale of goods deteriorating or about to deteriorate in a warehouse and accounting for the proceeds of such sales;

(*s*) the classification of goods stored in a warehouse;

(*t*) the standard weights and measures to be used in warehouses;

(*u*) the procedure to be followed in proceedings before the Board of Arbitrators and the mode of executing their awards;

(*v*) generally for the efficient conduct of the business of a warehouseman.

(*3*) The rules made under this section shall be subject to the condition of previous publication in the Official Gazette.

STATEMENT OF OBJECTS AND REASONS.

The object of the Bill is to encourage the establishment of independent warehouses for the storage of agricultural produce and to make provision for their proper supervision and control. The receipt issued by a licensed warehouseman for the produce stored by him will serve as a collateral security for short term loans at a low rate of interest for the purpose of financing seasonal agricultural operations or other needs and will be transferrable by endorsement. The Reserve Bank is prepared to advance money for the purpose at a low rate of interest through the Provincial and other Co-operative Banks. The proposed legislation which is based on the lines recommended by the Reserve Bank will enable agriculturists to secure short term loans against their agricultural produce and eliminate the necessity of disposing of their produce in unfavourable market conditions. Savings have been made in favour of co-operative societies in the operation of sections 20 and 21.

Dated 5th September 1947.

(Signed) VAIKUNTH L. MEHTA.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to the Government of Bombay,
Legal Department.

Bombay, dated 5th September 1947.

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